(1) Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

October Term, 2000

ALLEN HERSCHAFT,

Plaintiff,

-against-

NY BOARD OF ELECTIONS,

Defendants.

ON PETITION FOR WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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30pp

I) Questions Presented for Review

Whether the Court of Appeals and the Federal District Court erred in applying only a rational basis standard to the NY Election law instead of a strict scrutiny standard when evidence was presented that the governor of NY himself had stated in the very first paragraph of his approval memorandum for the Election Reform Act of 1992 that "NY's Election is notorious... for its pro incumbent effects...It frustrates democracy and diminishes accountability. It sets traps for the unwary to protect the incumbent."

Whether NY's Election Law provision specifically its provision regarding the gathering and collecting of petition signatures for independent third party candidates is a reasonable and nondiscriminatory provision or whether it severely burdens access to the ballot for the plaintiff, the plaintiff who in this case is claiming to be a qualified disabled candidate under the ADA who is suffering from the mental disability or impairment of schizophrenia which is currently in remission, who could, according to expert testimony presented to the 2nd circuit, suffer a relapse of his schizophrenic condition if he is subject to the time constraints of the challenged provision without any accommodations being made for his condition.

Whether a time frame to collect petition signatures which plaintiff is requesting which would begin six weeks prior to the 7 ½ month early application deadline as specified in the case Anderson v. Celebrezze, 460 US 780 (1983) is a reasonable accommodation able to withstand scrutiny.

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II. A Concise Statement of the Basis for Jurisdiction by this Court.

The case involves Federal and Constitutional questions specifically the First and Fourteenth amendments of the Constitution and the interpretation of a Federal Statute- the ADA.

b.) The Date of the Order sought to be reviewed was entered.

The date the Summary Order was entered was Nov. 3rd, 2000 in the 2nd Circuit Court of Appeals.

c.) The Constitutional Provisions, Statutes, Ordinances involved in the case, set out verbatim with appropriate citations.

The First Amendment of the US Constitution
Congress Shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fourteenth Amendment to the Constitution Section One
....No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

NY Election Law Section 6-138(4)
A signature made earlier than six weeks prior to the last day to

file independent petitions shall not be counted....

d.) If review of Judgment by the US Court of Appeals is sought- the basis for Federal Jurisdiction in the court of First instance.

Federal Question, Civil Rights- Constitutional Questions (First and Fourteenth Amendments), and the interpretation of a Federal statute- the ADA act.

e.) Statement of the Case

This is an action by plaintiff, pro-se seeking an injunction to enjoin provision 6-138(4) of the NY Election law. On May, 15th, 2000 plaintiff brought suit against the defendant in the Eastern District court of NY. This was after he had sent three certified letters to the defendant asking for a response to the plaintiff 's inquiries as to whether the NY Board of Elections could grant plaintiff an accommodation, a waiver of NY election law 6-138(4) so that plaintiff could start to gather petition signatures earlier than the law provides for. Plaintiff was notified on May 13, 2000 that the board doesn't have the power nor the authority to waive any provision of said election and that the board cannot rule on any alleged constitutional violations.

On May 18th, 2000 there was a hearing before senior Judge Jack Weinstein, who heard from both parties as to the issues in dispute and he reserved judgment as to the rendering of a decision. At the hearing, defendant submitted a Motion to Dismiss. Also, at the hearing Judge Weinstein gave the parties 30 days to submit anything that would bolster their case. The judge told the defendant to submit a brief on plaintiff's claim regarding the ADA he was making. On May 19 & 22, Plaintiff

submitted a Brief in opposition to the Defendant's Motion to Dismiss and Cross Motion for Summary Judgment and subsequent Amendment memo.

On May 25th, 2000 Judge Weinstein granted the defendant motion to dismiss even though the defendant never addressed plaintiff's ADA claim in a Brief. On June 16th, 2000 and June 19th, 2000 plaintiff submitted expert testimony a letter from his clinical psychologist who had treated him the year before regarding his ADA claim, and an anonymous article written by the plaintiff in the Schizophrenia Bulletin describing how plaintiff's life functioning had been effected and impaired because of his illness (Thus showing plaintiff had a record of impairment of his life's activities because of his illness) to the clerk of the US Court of Appeals for the 2nd Circuit.

On October 28th, 2000 there was a hearing before a panel of judges in the 2nd circuit regarding Plaintiff's claims concerning violations of the first and fourteenth amendment of the US Constitution as well as his ADA claim.

On November 03, 2000 there was a summary order issued which dismissed plaintiff's constitutional challenge of the NY election law provision 6-138(4) for the reasons stated in the opinion *A v. the NY Board of Elections*, 99 F. Supp. 2nd 258, 260-261 (ED NY 2000). But the court held regarding plaintiff's ADA claim that it must be considered in light of the evidence presented to the court regarding the letter from the Doctor on June 16th, 2000 which was not available to the court at the time of this decision, but nevertheless was timely because the Judge had given the parties one month to bolster their cases. The case was remanded to the District court to consider whether plaintiff's allegations together with the letter from his doctor, state a claim for relief under the ADA.

Shortly thereafter, plaintiff wrote a petition for Writ of Certiorari to this court regarding his constitutional violation

claim which was within the context of his ADA claim. In that plaintiff asserts that said election law severely burdens his access to the ballot as a qualified disabled third party candidate who has asked for an accommodation and has been denied one by the defendant.

f.) A direct and concise argument amplifying the reasons relied on for allowance of the Writ (Rule 10).

Reasons relied on for this writ are threefold according to Rule 10 of the Supreme Court Rules;

1. A US Court of Appeals has sanctioned a departure by the District Court from the accepted and usual course of judicial proceedings; as to call for an exercise of the Supreme Court of the US's supervisory power and;

2. A US Court of Appeals has decided an important question of federal law that has not been, but should be settled by this court and;

3. The Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of the Supreme Court.

A US Court of Appeals has sanctioned a departure by a US District Court from the accepted, usual course of judicial proceedings.

In its decision of May 25th, 2000, the District court considered only the complaint and the Rule 12-(b)(6) motion in its decision. It should also have considered my memorandum of law in opposition to the motion to dismiss and subsequent Amendment Memo, since according to Rule 12 (b) any defense or objection is not waived by being combined in a subsequent motion or further pleading (I submitted a cross-

motion for Summary Judgment but the court did not acknowledge this in its decision).

In these documents, I presented the Governor's Approval Memorandum for the Election Reform Act of 1992, where the governor describes previous NY election laws as being "pro-incumbent", "anti-democratic" and having "set traps for the unwary to protect the incumbent." I also made the arguments in those two documents that the NY election law is discriminatory and severely burdens plaintiff's access to the ballot (since I am relatively poor, I may have trouble raising adequate funds for the campaign; I can't be under excessive stress because of my illness; I may encounter trouble getting volunteers to work in my campaign against an incumbent council-member in the next election; Also the election law stipulates a six-week period in which I would have to collect petition signatures during the summer when most of the voters will have been away on vacation). I should point out here, that I am a mentally disabled candidate who has a record of impairment of a life's limiting activities and therefore qualify as a disabled candidate who has requested an accommodation by a public entity in NY (the NY Board of Elections) and have been denied one under the NY election law.

It seems that the Court of Appeals for the 2nd Circuit affirmed the dismissal of the Federal District Court with respect to my challenging of the constitutionality of the NY election law on the first and fourteenth amendment grounds without any argument or discussion of the issue and which decision by the Court of Appeals referred the reader to the District court opinion. Therefore, what the court of Appeals has done is in effect to have given sanction to the District courts opinion which did not consider arguments made in my memorandum in opposition to the motion to dismiss and in support of Summary Judgment which contained as I stated above the Governor's Approval Memorandum.

The US Court of Appeals has decided an Important Federal Legal Question that has not been but should be settled by this Court.

The US Court of Appeals by deciding in its summary order to affirm the dismissal of the challenge to the New York Election Law on constitutional grounds thereby concluded by inference that the NY Election law is "reasonable and non-discriminatory" And does not severely burden my access to the ballot and thereby only requires a rational basis as the defendant has characterized the NY Election law and the challenged provision in particular. The problem is that nowhere in these two decisions on the discussion of the issue- is any direct reference made to the Governor's characterization of previous NY Election law as described earlier in his Approval Memorandum for the Election Reform Act of 1992. Furthermore, no where in the decisions is mention made or discussed of how the Election Law in Question does not severely burden my access to the ballot taking into consideration the nature and severity or potential severity of Plaintiff's mental illness-schizophrenia which because of the illness according to expert testimony presented to the second circuit may cause plaintiff to decompensate severely and which may cause him to have a relapse of his schizophrenic condition if he is forced to work within the normal time parameters of said election law.

The issue of the ADA act and its provisions applying to the Election Law is novel and has not been applied in the other states or circuits and is such an important issue in terms of its implications and ramifications on Democracy, Democratic institutions and values and on American politics and or American Political influence that such an issue should be decided by this court and not left to be decided cursorily or without much thought being given to its implications by the

Court of Appeals and Federal District as had occurred in Plaintiff's case.

The Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of the Supreme Court.

The US Court of Appeals by holding that the NY Election law requires only a rational basis, and not a compelling or strict scrutiny, when the governor of NY admitted contrary to his or the state's interest that NY election laws in the past were "pro-incumbent, ""anti-democratic" and "set traps for the unwary to protect the incumbent" would appear to be going against the grain of relevant Supreme Court decisions holding that such a discriminatory statute would require compelling scrutiny. This is so since according to NY law an admission contrary to interest if made freely is presumed to be the case but may be rebutted by clear and cogent proof. *Arena v. Home Indemnity Company*, 33 AD 2nd 634, 306 NYS 2nd 242(2nd Department 1969). Defendant it should be noted was never asked by the lower courts to provide such clear and cogent proof to the contrary and therefore has never rebutted the presumption that the NY election law is discriminatory and anti-democratic in nature.

According to the relevant Supreme Court precedent of *Clements v. Fashing*, 457 US 957 (1982) at 964, heightened scrutiny would be required if the restriction "unfairly or unnecessarily burdens the availability of political opportunity" which is what the NY election law appears to do in this case.

Furthermore, according to Lawrence Tribe in *American Constitutional Law* (Mineola, NY, 1988, 2nd edition) "Democracy envisions rule by successive temporary majorities. The capacity to displace incumbents in favor of the representatives of a recently coalesced majority is, therefore, an

essential attribute of the electoral system in a democratic republic. Consequently, both citizens and courts should be chary of efforts by government officials to control the very electoral system, which is the primary check on their power. Few prospects are so antithetical to the notion of rule by the people as that of a temporary majority entrenching itself by cleverly controlling the [electoral] system" at 1097.

Moreover, he asserts, "It is not surprising, that the vigor of judicial review of election laws has been roughly proportioned to a [temporary majority's] potential for immunizing [their] current leadership from successful attack. Thus, courts have reviewed rather summarily laws that specify eligibility requirements for a particular candidate, but have more carefully appraised the fairness and openness of laws that determine which political groups can place any candidate of their choice on the ballot" Id.

In addition, Nowak & Rotunda assert in *Constitutional Law* (6th Edition, St. Paul, MN, 2000) that "Although the Supreme Court has recognized that basic constitutional rights are intertwined in the electoral process, the court has also noted that elections are largely political creatures and that the courts should refrain from getting too involved in basically political decisions. Nonetheless, restrictions on candidacy for elective office impair the right of voters to cast a ballot for the candidate of their choice, protected by the 14th amendment due process and equal protection clauses, and the right of persons to associate in the expressions of views in a political campaign, which is protected by the first amendment. Therefore, the judiciary most scrutinize the basis for such legislation to insure that ballot access restrictions are a reasonable, and nondiscriminatory measures means of promoting important state interests" at 943 quoting *Anderson v. Celebrezze*, 460 US 780 (1983). Plaintiff feels in his case this has not been done by neither the US Court of Appeals nor the US federal district

court.

Further, according to *Kramer v. Union Free School District*, 89 S.Ct. 1886 (1969)

"Since the right to exercise the franchise in a free and is unimpaired manner is preservative of other basic civil and political rights any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized" at 1889. Since in my case the governor of NY has made an admission contrary to interest and as noted before there is a presumption that that which the governor said is true, unless it is rebutted by overwhelming evidence to the contrary, Kramer's holding by this court that any alleged infringement on the right of citizen's to vote requires strict scrutiny would most probably in my case require strict scrutiny as well since there is a strong presumption that what the governor said is true unless it is rebutted, which is until now has not been and which would be proof that to the contrary, that the US court of appeals and the federal district court erred in applying only a rational basis standard to the election law and not a compelling or strict scrutiny

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 3rd day of November, two thousand.

Present: HON. WILFRED FEINBERG,
HON. ROGER J. MINER,
HON. ROBERT A. KATZMANN,
Circuit Judges.

ALLEN STUART HERSCHAFT,

Plaintiff-Appellant,

-v.-

NY BOARD OF ELECTIONS,

Defendant-Appellee.

For Plaintiff-Appellant: Allen Stuart Herschaft, Brooklyn, New York, pro se.

For Defendant-Appellee: Janet L. Zaleon, Assistant Corporation Counsel, New York New, York (Michael D. Hess, Corporation Counsel).

Appeal from the United States District Court for the Eastern District of New York (Jack B. Weinstein, J.)

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the decision of the District Court be and it hereby is *AFFIRMED* in part and *REVERSED* in part.

Plaintiff-Appellant Allen Herschaft, *pro se,* ("plaintiff") appeals the district court's decision dismissing his complaint against the New York Board of Elections("Board" or "defendant"). Plaintiff's complaint challenged the constitutionality of New York Election Law §6-138(4) under the First and Fourteenth Amendments to the U.S. Constitution. Them complaint also alleged that the Board's failure to accommodate plaintiff's disability, by not extending the amount of time he would be allotted to collect signatures in order to get his name on the ballot for the 2001 elections for New York City Council, is in violation of the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq* ("ADA").

We review the district court's decision de novo. *See Prestia v. O'Connor,* 178 F.3d 86, 88 (2d Cir.) *cert. denied,* 120 S. Ct, 539 (1999). Regarding the plaintiff's constitutional challenge of the district court, *A. v. New York Board of Elections,* 99 F.Supp.2d 258, 260-61 (E.D.N.Y. 2000). However, plaintiff's claim under the ADA must be considered in light of evidence not considered b6y the district court. The district court reasoned that plaintiff's ADA claim could not proceed because plaintiff failed to identify "a rational nexus between his current state of schizophrenia in remission and the need for an extension of time for signature collection...." *Id. At 260.* Relying solely on the allegations in plaintiff's complaint,

the district court's decision appears correct. However, two additional documents submitted by the plaintiff raise questions such that the motion to dismiss must be reconsidered.

We briefly describe how these documents are properly before this court even thought the district court's decision was written without the benefit of having reviewed them. On May 18, 2000, the district court conducted a hearing on the Board's motion to dismiss plaintiff's complaint. At the close of the hearing the court noted that the defendant's motion to dismiss did not address plaintiff's claim under the ADA. Defendant offered to submit additional papers regarding that claim. The court agreed and informed both parties, [s]ubmit anything you want within a month." Despite this statement, the district court issued its decision dismissing the case a week after the hearing, on May 25, 2000.

On June 16, 2000, the plaintiff submitted to the clerk of this court a letter from a clinical psychologist, Dr. Benjamin Lerner, PhD, dated June 15, 2000. On June 19, the plaintiff submitted to this court a letter allegedly written by the plaintiff which was published (as written by Anonymous) in Schizophrenia Bulletin's "First Person Accounts Series" in 1996. While the article from Schizophrenia Bulletin does not do much to advance plaintiff's ADA claim, the letter from Dr. Lerner is significant. The letter states that the plaintiff was a patient of Dr. Lerner from January 11, 1999 - August 12, 1999 and that the doctor's diagnosis of the plaintiff's condition was "Schizophrenia, Paranoid Type." More importantly, the letter states that, in the doctor's opinion, due to plaintiff's psychological disability he would require additional time to carry out the task of gathering petition signatures. The doctor further opined that requiring the plaintiff to work within "normal time parameters would probably cause him to decompensate severely, which may result in a serious breakdown, and hospitalization.

To state a claim under the ADA, plaintiff must show that (1) he was a qualified individual with a disability (2) who, by reason of his disability, was excluded from participation in(3) a service, program or activity of a public entity. *See* 42 U.S.C. §12132; *see also Gohier v. Enright,* 186 F.3d 1216, 1219 (10th Cir. 1999) (setting forth very similar standard). We hasten to note that, when considering motions to dismiss the claims of plaintiffs proceeding *pro se*, courts in this circuit construe the pleadings liberally. *See e.g. Flaherty v. Lang,* 199 F.3d 607, 612 (2d Cir. 1999). This is especially true when dealing with civil rights complaints. See *id.*

Plaintiff's complaint alleges that he is a covered individual under the ADA, schizophrenia being his qualifying illness and that the Board has refused to accommodate his disability. The Board is clearly a covered entity. The district court should consider whether plaintiff's allegations, which must be taken as true, together with the letter from Dr. Lerner, state a claim for relief under the ADA.

The cause is remanded to the district court for reconsideration of the plaintiff's claim under the ADA.

We have considered all of the parties contentions and arguments on this appeal. The decision of the district court is *AFFIRMED* in part and *REVERSED* in part and *REMANDED* in accordance with the foregoing.

FOR THE COURT:
ROSEANN B. MACKECHNIE, CLERK
By:
s/_____
Lucille Carr

A., Plaintiff,
v.
The NEW YORK BOARD OF ELECTIONS,
Defendant.

No. CV00-2748

United States District Court, E.D. New York.

May 25, 2000.

Candidate for city council seat challenged validity of state statutory limitation on signature collection period for nominating petitions. On state's motion to dismiss, the District Court, Weinstein, Senior Judge, held that: (1) six week signature collection period did not violate Americans with Disabilities Act (ADA) rights of candidate suffering from schizophrenia, and (2) limitation did not violate due process.

Motion granted.,

[1] CIVIL RIGHTS # 107(1)

78K107(1)
Party seeking accommodation under Americans with Disabilities Acct (ADA) must show that it is necessary to ameliorate impairment arising from alleged disability; Act does not demand accommodation for impairments not causally related to alleged disability. Americans with Disabilities Act of 1990, § 102, 42 U.S.C.A. § 12112.

[2] CIVIL RIGHTS # 110.1
78K110.1
New York election law's week signature collection period for independent candidate nominating petitions did not violate Americans with Disabilities Act (ADA) rights of candidate suffering from schizophrenia; candidate was not entitled to accommodation absent showing of causal relationship between his current state of schizophrenia in remission and need for extension of time for signature collection. Americas with Disabilities Act of 1990, § 102, 42 U.S.C.A. § 12112; N.Y. McKinney's Election Law § 6-138(4).

[3] ELECTIONS # 1
144k1
Right to vote in any manner and right to associate for political purposes through ballot are not absolute.

[4] CONSTITUTIONAL LAW # 274.2(2)
92k274.2(2)
New York election law's six week signature collection period for independent candidate nominating petitions was not unreasonably burdensome, and thus did not violate due process rights of candidate who needed only 1,460 signatures to qualify for inclusion on ballot. U.S.C.A. Const. Amend. 14; N.Y.McKinney's Election Law § 6-138(4).

[4] ELECTIONS # 21
144K21
New York election law's six week signature collection period for independent candidate nominating petitions was not unreasonably burdensome, and thus did not violate due process rights of candidate who needed only 1,460 signatures to qualify for inclusion ballot. U.S.C.A. Const. Amend. 14; N.Y.McKinney's Election Law § 6-138(4).

MEMORANDUM & ORDER

WEINSTEIN, Senior J.

*1 Plaintiff, pro se, seeks injunctive relief alleging that Section 6-138(4) of New York's Election Law violates both the American's with disabilities Act (ADA), see 42 U.S.C. § 12101 et seq., and the Fourteenth Amendment, see U.S. Const. Amend. XIV, The New York Board of Elections has moved for dismissal.

For the reasons below, the case is dismissed.

I FACTS

The facts alleged by plaintiff are assumed true, All reasonable inferences from those facts are drawn in plaintiff's favor. See, e.g., Gordon v. Griffith, 88 F.Supp.2d 38, 40 (E.D.N.Y.2000).

Plaintiff is interested in conducting an independent candidacy for the 48th New York City Council District. See compl.¶ 7; see also Appendix A. under New York's Election Law, an independent candidate must file a nominating petition containing the valid signatures of either 5% of the total number of votes cast for governor in the last gubernatorial election in the council district, or 2,700 signatures, whichever is less. See N.Y. Elec.L. § 6-142(2) ("An independent nominating petition for the nomination of candidates for an office [which is not a state-wide position]...must be signed by voters numbering five centum of the total number of votes case for governor at the last gubernatorial election in such unit..."). In order to appear on the ballot for the November 2001 election, plaintiff must therefore collect 1,460 valid signatures, which represents 5% of the 29, 190 votes cast in the last gubernatorial election in the 48th

council district. See Def's Mem. Of Law in Opp. To Plf's mot. For prel. Inj. & in supp. Of Mot. To Dismiss at 2.

Plaintiff has presently filed the necessary papers declaring his candidacy with the Board of Elections and desires to begin collecting the 1,460 signatures needed. Id. At ¶ 8. Section 6-138(4) of New York's election law, however, provides that any signatures collected before July 10, 2001 will not be valid signatures. That provision permits signature collection for only a six week period. For the November 2001 election, it will run from July 10, 2001 until August 21, 2001. Plaintiff contends that this narrow window violates both the ADA and the Fourteenth Amendment.

With respect to the ADA claim, plaintiff contends that he suffers from clinically diagnosed schizophrenia which is now in remission. Schizophrenia is a psychotic disorder characterized by loss of contact with the environment, by noticeable deterioration in the level of functioning in everyday life, and by disintegration of personality expressed as disorder of feeling, thought as in hallucinations and delusions, and conduct. See, e.g. 2 J.E. Schmidt, attorneys' Dictionary of Medicine (1975). Though plaintiff has not suffered a schizophrenic episode for some time, he alleges that should he suffer such an episode during the six week signature collection period his efforts would be adversely affected. To forestall this possibility, plaintiff seeks an injunction permitting him "a year of more to gather petition signatures," rather than the six weeks currently provided. Compl. ¶ 13.

* With respect to the Fourteenth Amendment claim, plaintiff argues that–even for a person without a disability–the six week period to obtain 1,460 signatures imposes an undue burden on ballot access in violation of the Federal Constitution.

II LAW AND APPLICATION

A. ADA Claim

[1] A party seeking an accommodation under the ADA must show that it is necessary to ameliorate an impairment arising from the alleged disability. See Buckley v. Consolidated Edison Co., 155 F.3d 150, 156 (2d Cir.1998) (en banc). The Act does not demand accommodation for impairments not causally related to the alleged disability. Id. At 156.

For example, the court of appeals in Buckley addressed the issue of whether a recovering drug addict who was required as a condition of employment to undergo periodic drug testing was entitled to an accommodation "extending the time allowed for him to urinate" while undergoing the test. Id. At 156. The court reasoned:

> There being no suggestion that [plaintiff's] inability to produce a urine sample under the time constraints or under supervision was related to his recovering-substance-abuser status, this...fails to state a claim under the ADA, for what the ADA forbids is discrimination "because of the disability of" the qualified individual and discrimination "on the basis of disability.

Id. at 156.

[2] Plaintiff's ADA claim suffers from the same defect as those alleged in Buckley. He has not identified a rationale nexus between his current state of schizophrenia in remission and the need for an extension of time for signature collection in the Summer of 2001. As a result, his ADA claim fails as a matter of law.

B. Fourteenth Amendment Claim.

[3] The right to vote in any manner and the right to associate for political purposes through the ballot are not absolute. Burdick v. Takushi, 504 U.S. 428, 433, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992). As the Supreme Court instructs, "[c]ommon sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections." See id.

"Unlimited access to the ballot would inevitably produce confusion, and states may thus limit the number of candidates that appear on the ballot." LaRouche v. Kezer, 990 R.2d 36, 39 (2d Cir. 1993). One way states may institute limitations is by "requiring candidates to produce evidence of public support" through ballot petition requirements. Id. at 40.

[4] The rigorousness of an inquiry into the constitutionality of petition requirements depends upon the extent to which they burden individuals' rights to vote, to run as a candidate, and to associate with each other for political ends
ds. See Burdick, 504 U.S. at 434. As a practical matter, an election code, whether governing "the registration and qualifications of voters. The selection and eligibility of candidates, or the voting process itself, inevitably affects" these rights. Id. at 433. So long as the petition requirements "impose[ ]only 'reasonable, nondiscriminatory restrictions,' "id. At 434, the state's important interest in restricting ballot access to avoid "confusion, deception, and even frustration of the democratic process" are generally sufficient to justify the restrictions. LaRouche, 990 F.2d at 39.

*3 Section 6-138(4)'s limitation on signature gathering to a six week period does not impose a severe burden on plaintiff in

gaining access to the ballot. He will have over 42 days to collect the 1,460 signatures. On average, he must only collect 35 signatures per day. Given that the 48th district is only 1.5 miles in width and only 3 miles in length, he ca easily canvass it on foot to collect the signatures. See Appendix A (map of district) (located on the internet at <http://www.cmap.nypirg org/scrip ts/esrim ... IN & Address= & ZIP= & click.x=248 & click.y=261 > (visited May 25, 2000))

The Supreme Court and the court of appeals have upheld signature gathering requirements far more burdensome. For instance, in American party of Texas v. White, 415 U.S. 767, 785, 94 S.Ct. 1296, 39 L.Ed.2d 744 (1974), the Court found that Texas's requirement that candidates gather 22,000 signatures in 55 days, a rate of 400 signatures per day, did not impose an undue burden on access to the ballot. In Storer v. Brown, 415, U.S. 724m 740 94S.Ct. 1274, 39 L.Ed.2d 714 (1974), the Court considered a California ballot-access law requiring independent candidates to gather 325,000 signatures in 24 days. The requirement was upheld by the Court which observed that "[s]tanding alone, gathering 325,000 signatures in 24 days would not appear to be an impossible burden. Signatures at the rate of 13,542 per day would be required, but 1,000 canvassers could perform the tasks if each gather 14 signatures a day." Id. Similarly, in Larouche, the court of appeals for the Second Circuit upheld a Connecticut statute that required candidates for the Democratic party presidential primary to collect 6,518 signatures in a two week period, a rate of 466 signatures per day.

Because section 6-138(4)'s requirements do not unduly burden the rights to vote, to run as a candidate, or to assemble and are rationally related to the state's interest in preventing confusion in balloting, they do not violate the Fourteenth Amendment.

III CONCLUSION

The complaint is dismissed. No costs or disbursements are assessed.

SO ORDERED.

APPENDIX A
TABULAR OR GRAPHIC MATERIAL SET AT THIS POINT IS NOT DISPLAYABLE
END OF DOCUMENT

Governor's Approval Memorandum

Election Reform Act of 1992
S. 7922 Bruno Ch.79
A. 11505 Rules (Vitaliano et al)
Approval #6

Public Service Law: §44: Election Law: Amend generally: Tax Law: §691. New York's Election Law is notorious for the hypertechnical intricacy of its provisions, and its pro-incumbent effects. And it should be. It frustrates democracy and diminishes accountability. It sets traps for the unwary to protect the incumbent.

This bill will encourage voter registration, increase ballot opportunities for challengers, and thereby help improve accountability in government.

This bill will help get voters to the voting booth, by making registration easier, and by reducing burdensome re-registration requirements for those who move within counties or New York City.

CHAPTER LAW MEMORANDA

Voter registration forms will be more readily available. The Tax Department will mail them out with tax forms. Agencies with regular public contact–including DMV, DSS, Labor, and the Department of State–will distribute and provide receptacles for voter registration forms.

Those traditionally underrepresented, including younger citizens in high schools and colleges, will be encouraged to register and vote. High schools will couple civic education with a new opportunity for 17-years olds, those who will turn 18 by end of the calendar year, to register.

The bill also will make it easier for alternative candidates to emerge, so that voters have a wider choice from

which to select. Form many elections, fewer signatures will be required for a challenger to be placed on the ballot. Harmless mistakes on the petition forms will no longer have to mean the end of a campaign. Citizens who sign petitions will no longer have their names struck simply because someone made a clerical error in undercounting the number of signatures on a page. These are important reforms, because they reorient us to substance, not form, in the petitioning process, and more choice, not less, in free elections.

This bill does not include far broader reforms which the Speaker and I have been urging for some time, and will continue to urge. It does not enact lower contribution limits for New York City urged by Mayor Dinkins. Many citizens believe that money can buy elections, and that dollars contributed for re-election turn into dollars spent for influence. This bill does almost nothing to address this, because the Senate blocked all serious reform in campaign finance.

The bill does enact limits on the amounts contributors may contribute for many elections, including the races for governor and the Legislature–limits which might accurately be described as faint-hearted. It does, for the first time, place some restraint on the size of contributions legislative campaign committees can receive–but limits which, as a practice matter, may have only a limited effect.

The bill does little to discourage the continuing, easy-going connection between issue-oriented votes and campaign dollars. It does little to reward candidates who, by limiting their expenditures, rely on the content of their message, not the money that buys its broadcast, to win public support, It does little to help candidates who wish to avoid relying on campaign contributions by special interests.

The Assembly and I were eager to undertake those reforms. I proposed, and the Assembly passed, comprehensive campaign finance legislation to that end.

The Senate refused to pass it. Without serious consideration. Without adequate explanation. With nothing but the conviction that the public would be indifferent to their self-interest–to wealth, not the public interest, being a decisive element in the Senate's decisions on fundamental issues affecting citizens of this state.

The bill to be presented is a significant accomplishment for this State in several areas. But it is an inadequate response to the need for campaign finance reform.

Some have recommended a veto on that ground, saying that approval will bar any further reform, but that a veto will somehow make the Senate do more. They said that as well as a year ago, when I approved a different bill; then they said that with an approval no more reforms would follow. They were wrong.

Speaker Weprin and I continue to be committed to achieving the reforms left undone by the Senate. I expect the Assembly to adopt them in the days immediately ahead. Then all those who are eager to see more reforms will have another opportunity to join with the Assembly and the governor in making this State a still better example of the democratic process that it is today. We go from stone to stone across the morass.

[Letterhead of Benjamin Lerner, Ph.D.]

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June 15, 2000

Justice
U.S. Court of Appeals
Second Circuit

Re: Allen Herschaft

Dear Sir/Madam:

Mr. Allen Herschaft was under my care from January 11, 1999 - August 12, 1999, receiving treatment for emotional problems. At that time he was in remission, working as a law librarian, after three hospitalizations. My diagnostic impression was Schizophrenia, Paranoid Type.

Mr. Herschaft advises that he is contemplating running for public office. In my opinion, he would require additional time to carry out the task of gathering petition signatures, because of his psychological disability. The stress of working within normal time parameters would probably cause him to

decompensate severely, which may result in a serious breakdown, and hospitalization.

Very truly yours,

Benjamin Lerner, Ph.D.